



North Sea Transition  
Authority –  
Regulatory Update

July 2022

This bulletin summarises some of the more significant regulatory and governance developments from the North Sea Transition Authority (“**NSTA**”) since our last update in February 2021, together with links to access the relevant releases. A list of other topics addressed by the NSTA not covered in this bulletin can be found at the end.

With effect from 21 March 2022, the Oil and Gas Authority changed its name to the North Sea Transition Authority to reflect its evolving role in the energy transition. This update reflects the name change, however some of its guidance has not (yet) been updated to reflect the new terminology.



## Introduction

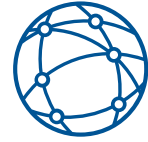


It has been over a year since the NSTA published a revised Strategy (the “**NSTA Strategy**”) which focused industry’s attention firmly on its role in working towards “net zero”. Throughout 2021 and into 2022 the impact of those changes has become more apparent, with a raft of updated guidance, reports and communications from the NSTA seeking to assist and accelerate industry’s progress on energy transition. Since our last update in February 2021, published [here](#), the NSTA has also continued to advance its regulatory approach.

Despite the focus on energy transition and net zero, the NSTA has not been immune to the increased scrutiny of the oil & gas industry generally and has faced various court challenges, in particular by environmental activists.

This update focusses on key developments in relation to the NSTA’s regulatory role, in particular in the following areas:

- Sanctions and powers:
  - the mediation pilot;
  - investigations and sanctions notices; and
  - judicial review challenge.
- Operational support for industry:
  - Stewardship Expectation 12 – Supply Chain Collaboration and Cooperation.
  - new Governance Guidance;
  - the NSTA’s open letter to licensees on ESG disclosure and reporting; and
  - the NSTA’s approach to changes of control.
- What’s next?
  - the NSTA’s Overview for 2022; and
  - the NSTA’s Corporate Plan.



## Mediation Pilot extended

Historically, the NSTA has emphasised that it would prefer to exercise its ‘influencing’ role rather than its ‘regulatory’ role in trying to assist the industry with any disputes. It sees mediation as a potentially helpful option that may better address some issues than recourse to its regulatory powers. In February 2020, the NSTA launched a year-long “UKCS Mediation Pilot” to test the extent to which mediation can resolve certain UKCS licence disputes. However, there has been limited use of the UKCS Mediation Pilot to date and on 10 May 2022, the NSTA announced the pilot would be extended until at least six mediations have taken place or until 31 December 2023, whichever is sooner. Although the NSTA reports positive feedback from those that have engaged in the mediation process under the pilot, the extended duration for the pilot scheme and the limited number of target mediations suggests that there is not (at least yet) widespread use of mediation in this area.

## Investigations and Sanctions Notices

Under Chapter 5 of the Energy Act 2016 (the “**2016 Act**”) the NSTA has a series of powers in relation to dispute resolution, amongst which is the power to give sanction notices for failure to comply with a “petroleum-related requirement”.<sup>1</sup> Before issuing a sanctions notice the NSTA will first conduct an Enquiry (as described in its Enquiry Guidance) and then an Investigation (as detailed in its Sanction Procedure). Ultimately that process may lead to one of a number of outcomes, for example –

- the Investigation may be closed, the NSTA having determined there has been no failure; or
- the NSTA may accept work commitments in lieu or agree some alternative approach to remedy the suspected failure; or
- the NSTA may impose a sanction notice.<sup>2</sup>

Between 2017 and November 2021, the NSTA conducted 17 Enquiries and 9 Investigations. Last year alone the NSTA launched 6 Investigations (and published brief anonymous details), showing it is increasingly considering the use of its sanctions powers where there is a suspected failure to comply with a petroleum-related requirement. There seems to have been a focus on compliance with licence terms and reporting requirements, following the publication of the Thematic Review into Industry Compliance with Regulatory Obligations in October 2020:

- **February 2021:** an Investigation into a possible breach of reporting requirements under a licence.
  - **Current position:** in July 2021 the NSTA issued the party in question with a Sanction Notice and a fine (of £50,000) for breaching the licence requirements.
- **June 2021:** an Investigation into a possible failure to maximise economic recovery in the UK as a result of a commercial disagreement.
  - **Current position:** Investigation is ongoing.
- **August 2021:** an Investigation into a possible breach of field production consents.
  - **Current position:** in April 2022, the NSTA issued the party in question with a Sanction Notice and a fine (of £50,000) for breaching the field production consents.
- **August 2021:** an Investigation into the possible breach of flare consent, contrary to the relevant licence requirements.
  - **Current position:** Investigation is ongoing.
- **October 2021:** an Investigation into the proposed sale of 13 producing fields, amidst concerns that the transaction had suffered delays. One of the obligations under the NSTA Strategy is collaboration, and the Investigation considered the engagement between the relevant parties since the transaction was announced in February 2021.
  - **Current position:** the Investigation was closed in April 2022 without any sanction being issued; the NSTA’s announcement reminded the industry for the need to collaboration promptly on transactions.
- **November 2021:** the NSTA launched an Investigation into a possible breach of field Production Consent, contrary to the requirements of the related licences.
  - **Current position:** Investigation is ongoing.

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1. A “petroleum-related requirement” is defined in section 42 of the 2016 Act as:

- “A duty imposed under section 9C of the Petroleum Act 1998 to act in accordance with the current strategy or strategies produced under section 9A(2) of that Act for enabling the principal objective to be met;
- A term or condition of an offshore licence; or
- A requirement imposed by a person by or under this Act which, by virtue of the provision, is sanctionable in accordance with this Chapter.”

2. The four forms of Sanction Notices are detailed in sections 43 – 48 of the 2016 Act.

# Judicial Review Challenges



Arguably the most significant court challenge brought against the NSTA last year was that of *The Queen on the application of Cox v Oil and Gas Authority* [2022] EWHC 75 (Admin) which sought a judicial review of the NSTA Strategy. The case proceeded to a full hearing in December 2021.

## Background

The regulatory regime for the UK offshore oil & gas industry, established in 2016, is based on a requirement known as the “principal objective”, which is defined in the Petroleum Act 1998 (the “**1998 Act**”) section 9A as “the objective of maximising the economic recovery of UK petroleum...” known as “**MER**”. The NSTA is also required to publish one or more strategies for the purpose of enabling the principal objective to be met.

The original MER Strategy was implemented shortly after the establishment of the NSTA in 2016. On 11 February 2021, the NSTA Strategy took effect. To enable the principal objective to be met, this imposes on industry a “Central Obligation” in two parts:

1. Like its predecessor, the Central Obligation glosses the principal objective by requiring regulated companies to take the steps necessary to “secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters”;
2. In addition (and for the first time) there is a second limb to the Central Obligation, so that regulated companies are required, in seeking to comply with the first limb, to “take appropriate steps to assist the Secretary of State in meeting the net zero target, including by reducing as far as reasonable in the circumstances greenhouse gas emissions from sources such as flaring and venting and power generation, and supporting carbon capture and storage projects.”

Key to the precise scope of the Central Obligation is what is meant by “economically recoverable petroleum”. The NSTA Strategy defines the term “economically recoverable” in relation to petroleum as:

*“those resources which could be recovered at an expected (pre-tax) market value greater than the expected (pre-tax) resource cost of their extraction, where costs include both capital and operating costs (including carbon costs) but exclude sunk costs and costs (such as interest charges) which do not reflect current use of resources. In bringing costs and revenues to a common point for comparative purposes a 10% real discount rate will be used. Where relevant, UK Government carbon appraisal values for all greenhouse gas emissions will be used combined with the associated real terms social discount rate”.*

## Application for Judicial Review

The Claimants sought to challenge the NSTA Strategy on several grounds:

- 1) They asserted that the definition of “economically recoverable” was unlawful and/or frustrated the statutory purpose of the 1998 Act because:
  - a) it wrongly provided for a pre-tax approach when determining economic value, which is not provided for in the 1998 Act’s definition of the “principal objective”; and
  - b) it failed to account for the financial support the industry receives, including tax breaks, meaning that activities uneconomic for the UK as a whole could be pursued as a result.



2) They argued that the NSTA Strategy's definition of "economically recoverable" was irrational as it would result in increased levels of oil and gas production and thus increased greenhouse gas emissions and so conflicted with the purpose of the Climate Change Act 2008 and the UK Government's Net Zero Target.

### Judgment

The Claimants were unsuccessful on all grounds.

#### Ground 1 – Unlawfulness

The Court determined two key aspects:

- Interpretation of the term "*economic recovery of UK petroleum*" was a matter for the NSTA, and not a question of law for the Court with only one permissible interpretation of the statutory provision (as the Claimants had argued).
- In any event, the Claimants were wrong in their assertion that "*...by ignoring the effect of government-backed financial support, the Strategy has stretched the definition of "economically recoverable" too wide, such that activities that are not truly "economic" for the UK are nonetheless still sought to be maximised through the Strategy.*" That conclusion was reached by the Court after considering the background and context in which the legislation was considered by Parliament. The Claimants' arguments (in particular as regards what, if any, account should be taken of decommissioning relief) ignored the wider picture and also the fact that matters of taxation were for the Treasury and not the NSTA.

#### Ground 2 – Irrationality

- The Claimants' alternative claim of irrationality also failed. The NSTA's "have regard" duty under section 8(1) of the 2016 Act (i.e. its duty to have regard when exercising its functions, so far as relevant to, inter alia, the development and use of facilities for the storage of carbon dioxide, and how that may assist the Secretary of State to meet the Net Zero Target) was a process duty. The question of how to balance various objectives was a matter for the NSTA, not the Court. The NSTA, in consulting on and adopting the NSTA Strategy, manifestly had regard to UK domestic action on climate change, so the requirement was met.
- In any event, it was not clear that the consequence of the definition would be extra emissions. The Claimants' argument oversimplified the NSTA Strategy and the NSTA's economic assessment to the point of misunderstanding it and failed to take account of the fact that carbon costs have now been brought within the assessment of economic recovery – with reference particularly to carbon appraisal values for greenhouse gas emissions and the associated social discount rate.

The full judgment can be read [here](#).



# Operational Support for Industry – Supply Chain Collaboration and Cooperation (Stewardship Expectation 12)



On 14 June 2021, the NSTA published the Operational Support for Industry and Stewardship Expectation 12 (Supply chain collaboration and cooperation) (“**SE12**”) which sets out the ways in which the NSTA expects companies to collaborate with relevant supply chain contractors to support the delivery of relevant activities (as defined in the NSTA Strategy) on time and on budget.

The full SE12 publication can be accessed [here](#). However, in summary, it addressed five points:

- 1. Payment Terms** – supporting work towards the adoption of industry standard terms across the UKCS supply chain on the basis of a 30-day payment period.
- 2. Visibility of Upcoming Work** – promoting the use of the NSTA’s Pathfinder system (which can be accessed [here](#)) to publish upcoming tenders and project information such as decommissioning projects, and so encourage collaboration among supply chain entities by providing those companies sufficient time to pursue such opportunities.
- 3. Reducing Burden and Adding Value** – supporting the use of industry standard form contracts, and regular assessment as to their suitability, with a view to reducing tendering costs and enabling timely completion of the tendering process.
- 4. Collaboration with the Supply Chain** – encouraging remuneration models that reward contractors when cost and time savings are made and ensuring that limitations of liability are proportionate to the relevant risks and do not unduly burden the supply chain.
- 5. Alignment with Cross-Industry Initiatives** – encouraging relevant persons to ensure their culture and policies reflect industry initiatives which support collaboration.

Delivery of SE12 will be monitored through various engagements such as the Annual UKCS Stewardship Survey Supply Chain Action Plans.



# New Governance Guidance



The NSTA Strategy introduced a new Supporting Obligation relating to corporate governance. This requires that offshore licensees *“apply good and proper governance at all times, including complying with any governance principles and practices as the NSTA may from time to time direct”* and that they must comply with *“a direction made by the NSTA”* under paragraph 3.

The new Governance Guidance (the **“Guidance”**) describes what the NSTA considers to be *“good and proper”* governance, and provides general principles with which licensees can then determine how they should comply.

## **Responsibility for Governance**

The Guidance places responsibility for compliance on the Board of Directors of a licensee (or equivalent body which exercises effective control), which is referred to in the Guidance as the *“Relevant Board”*. The NSTA operates a ‘comply or explain’ approach and expects a Relevant Board to be able to explain how a licensee complies with the Guidance or identify reasons for any areas of non-compliance.

## **Adherence to a UK Corporate Governance Code**

All licensees are expected to adhere to an appropriate and recognised corporate governance code, such as the UK Corporate Code 2018, the Wates Principles of Corporate Governance 2019 or the QCA Corporate Governance Code 2018 – but the NSTA accepts that a ‘one size fits all’ approach to corporate governance is not appropriate given the diversity of UKCS operators and licensees and so will also normally accept adherence where appropriate to other recognised UK or overseas corporate governance codes.



# Specific Governance Principles



In addition, the NSTA expects all licensees to observe the specific governance requirements in the Guidance, which cover five key areas:

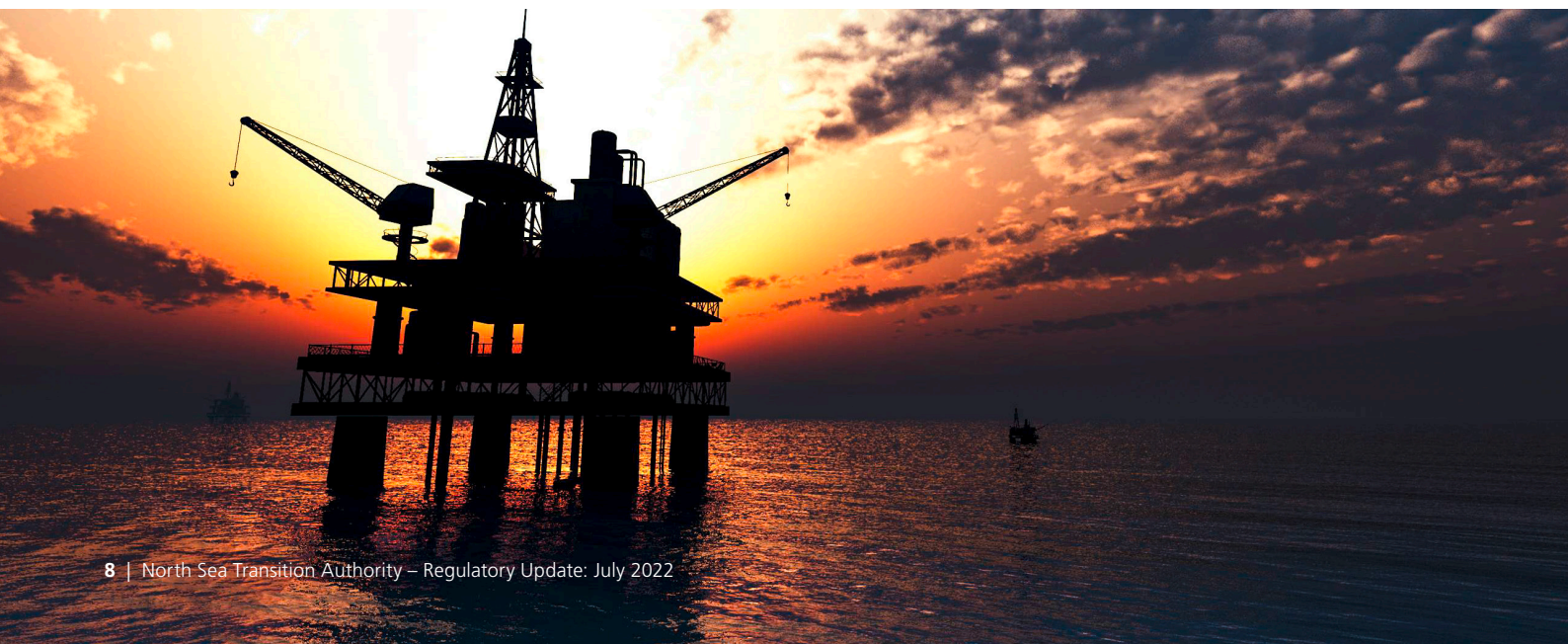
- 1. Purpose and Leadership, Board Composition and Director Responsibilities:** Relevant Boards are expected to:
  - a) have appropriate senior level knowledge and experience of: (i) offshore upstream operations, (ii) the specific requirements and challenges of the UKCS and (iii) all aspects of the NSTA Strategy (including the net zero target);
  - b) ensure compliance with NSTA requirements (which were published in December 2021 and can be found [here](#)) in relation to the fitness of persons who exercise control over a licensee; and
  - c) include an experienced Consultative Committee of Accountancy Bodies (or equivalent) qualified officer who has responsibility for the internal control, risk management and integrity of financial statements.
- 2. Delivery of Licence Commitments and the NSTA Strategy:** Relevant Boards should promote the long-term success of the licensee in the UKCS by identifying opportunities for the creation and preservation of value and the establishment of systems of oversight to identify and mitigate risks.
- 3. Audit, Risk, Internal Control and Reporting:** the Relevant Board must ensure compliance with all applicable financial accounting principles as set out by the International Financial Reporting Standards (“IFRS”) and the International Accounting Standards Board (“IASB”) and have a clear understanding of a licensee’s internal controls, accountability and responsibilities.

- 4. Environmental Governance Principles:** Relevant Boards should establish and embed a culture of greenhouse gas reductions in the operations of licensees. In this regard, the licensee’s performance should be measured, reported and tracked against UK Government targets and industry standards.
- 5. Corporate Social Responsibility:** the Relevant Board must give due consideration to its social responsibilities in the performance of its operations and interactions with stakeholders.

## Delivering on the Guidance

The Guidance does not impose new compliance reporting obligations on licensees nor will the NSTA systemically track compliance. However, the NSTA will be alert for actions or behaviours which suggest non-compliance, for example in the context of its Stewardship Review process and discussions with industry, investors and other regulators. A licensee’s governance may also be reviewed by the NSTA during its authorisation and review processes, particularly if an application for consent would result in a material change to the size and characteristics of a licensee. Licensees are expected to have incorporated the Guidance into their corporate governance frameworks by 18 July 2022.

The proposed Guidance is available [here](#) and our previous publication can be read [here](#).



# ESG Disclosure and Reporting



As part of its increased focus on corporate governance and to drive high standards of compliance and governance within the industry, the NSTA issued an open letter on 31 March 2022 to all licensees on Environmental, Social and Governance (“**ESG**”) disclosure and reporting (“**ESG Letter**”). The ESG Letter urges all licensees to focus on ESG disclosure and reporting in order to demonstrate that the UKCS is an attractive investment proposition and maintain investor confidence.

The NSTA believes this will meet investor requirements, as climate-related information will be incorporated in operators and licensee’s financial reports, in addition to key metrics.

## The ESG Letter

The ESG Letter highlights the resources available to support licensees in this process. Annex 2 of the ESG Letter provides a list of external sources of information on climate-related reporting which the NSTA suggests may assist companies.

The NSTA states in the ESG Letter its view that attracting debt and equity investment requires high-quality, authentic ESG reporting, but recognises that this places a burden on licensees. Therefore, the NSTA explains it has been working with the industry to evolve ESG requirements and standardise the approach to ESG reporting. The NSTA hopes this work will continue and will reduce the burden on licensees.

For this purpose, the NSTA ESG Taskforce (previously known as the OGA ESG Taskforce) (the “**Taskforce**”) was established in September 2020 to support licensees and enhance ESG disclosure and reporting. The Taskforce’s central objective is to act as a link between industry, the NSTA, and the investment community. The Taskforce aims to assist in maintaining investor confidence and access to capital. The Taskforce also works with relevant trade bodies and other regulators to highlight the significance of ESG disclosure and enhance the quality of reported data. Annex 1 of the ESG Letter provides the current recommendations of the Taskforce,

which includes a minimum standard of reporting and outlines overarching expectations on operators and licensees.

The ESG Letter states that given the number of new financial reporting policy initiatives announced in 2021 (including the UK Government’s Net Zero Strategy), the Taskforce has extended its remit and is considering whether further recommendations for optimal ESG reporting are required.

Finally, the ESG Letter reminds licensees of the NSTA’s new Guidance and recommends that all companies become familiar with it. In the ESG Letter, the NSTA also offers all licensees the opportunity for a 1:1 conversation to discuss ESG practice and disclosure.

The ESG Letter to licensees demonstrates the NSTA’s growing commitment to ESG disclosure and reporting. However, this is a fast-moving area in terms of both regulation and voluntary standards. In light of developing regulation, guidance and societal expectations, the NSTA and its Taskforce will need to continually review how industry reports on ESG and we can expect further recommendations for the industry over time.

The ESG Letter is available [here](#).



# NSTA's Approach to Changes of Control



In a letter addressed to all licensees in December 2021, the NSTA affirmed its approach to changes of control of licensees and how it takes decisions on the exercise of its change of control powers. The letter can be accessed [here](#).

The letter highlighted the increased merger and acquisition activity across the UKCS and indicated the NSTA's support for such undertakings. In particular, the NSTA raised concerns as to the effects of these changes of control on the fulfilment of a licensee's licence commitments, liabilities, and obligations, including commitments under the NSTA Strategy.

A 'change of control' of a licensee can be understood as any event by which a person who did not have control of a licensee when that licence was granted, or last assigned, comes to control that licensee.

While licensees are not required to obtain permission from the NSTA prior to a change of control, the NSTA is empowered to require a further change of control after such an event. If this is not implemented, then the NSTA may use its power to revoke the licence, either completely or partially. If the licence is partially revoked, this would remove the concerned licensee from the licence while allowing other licensees of the licence to continue.

It is at the NSTA's discretion as to whether it exercises its change of control powers and when deciding whether to do so, the NSTA will take into consideration how exercising these powers will affect its statutory functions and duties. The NSTA will also assess certain risks such as the licensee's ability to satisfy the commitments of the NSTA Strategy and in doing so, may consider the financial and technical capability of licensees. In the letter, the NSTA indicated that in order to mitigate the risks associated with a change of control, it will typically exercise its change of control powers unless a licensee demonstrates that the change of control has not prejudiced its ability to meet its commitments. To determine whether a transaction has prejudiced a

licensee's ability to meet its commitments, the NSTA will consider a number of issues including, for example, the potential impact of a change of control on any other licensees that were in the same corporate group as the licensee, prior to the change of control.

The NSTA may also assess whether the new controlling company and its directors are fit. If the NSTA decides that the company or its directors are unfit, then it will likely exercise its change of control powers. In assessing the fitness of a company or its directors, the NSTA will consider factors such as bankruptcy, association with corporate insolvency proceedings, unspent convictions for relevant offences, and whether the individual has been dismissed from employment or from a position of trust.

In order to mitigate the risk of the NSTA exercising its change of control or revocation powers, licensees considering a transaction which would result in a change of control may wish to seek a letter of comfort from the NSTA. This letter offers reassurance that the NSTA is not presently minded to exercise its change of control powers before the deal is completed. However, it is important to understand that this is not a guarantee that the NSTA will not later decide to require a change of control should it then decide this to be necessary.

In the instances of joint ventures, the NSTA has indicated that it will typically request representations from those joint venturers and other relevant persons as defined in the NSTA Strategy when deciding whether it will exercise its change of control or issue a letter of comfort.



# What Next?

## NSTA Overview for 2022



The NSTA's overview for 2022 highlights in particular the role of the oil and gas industry in assisting the UK achieve net zero. The NSTA aims to help drive North Sea energy transition and hold the industry to account on halving upstream emissions by 2030 whilst meeting the UK's energy demand and security. The report highlights:

- **NSTA's role in energy transition:** The NSTA's Energy Integration Report found that the UKCS could support approximately 60% of the UK's decarbonisation requirements, through platform electrification, carbon capture and storage, and offshore wind and hydrogen projects, such as the work in relation to a hydrogen project at Bacton;
- **Technology:** The Technology Leadership Board is co-chaired by the NSTA and industry and aims to develop and adopt technology in the UKCS to deliver MER UK and net zero. It has a focus on technologies which reduce emissions, such as flaring and venting reduction; energy efficiency; and low-carbon power;
- **Data and digital:** The NSTA has updated its Digital Energy Platform so that users can obtain a range of information and analysis. The Digital Energy Platform comprises: the National Data Repository, which enables more than 50 years' of data to be shared with users;
  - open site data, which encourages an integrated offshore energy system; and
  - the Pipework Works Authorisation portal, which is a new digitalise portal aiming to make the consent process more efficient.
- **Reducing decommissioning costs:** The cost estimate for decommissioning UKCS oil and gas infrastructure has reduced to £46 billion as at the end of 2022. This is a reduction of just over £13bn – as the cost estimate was £59.7 billion in 2016. The NSTA's strategic priorities to further reduce decommissioning costs are:
  - planning for decommissioning;
  - supporting energy transition;
  - commercial transformation; and
  - technology, processes and guidance.

The current decommissioning cost reduction target expires in 2022, and the NSTA is discussing with industry how it shall be replaced.

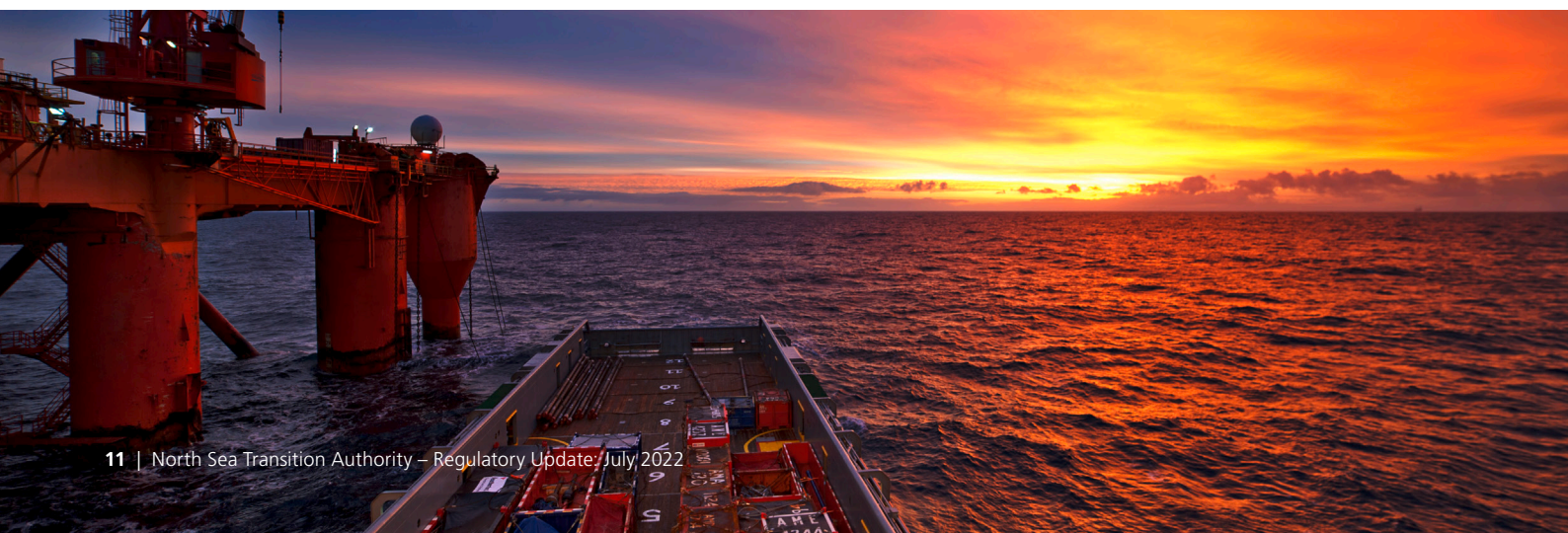
### Measuring success

The NSTA has developed a success stories tracker to allow impact to be quantified using the following metrics (which align with the NSTA's obligation to support the energy transition):

- the number of emissions prevented;
- the number of tripartite barrels;
- the value of investments;
- the decommissioning cost savings; and
- the time saved to industry.

The success stories tracker has recorded 31 success stories between February 2021 and February 2022, and 458 success stories since the inception of the NSTA.

The tracker shows the impact on the industry relative to what would have occurred in the absence of support or intervention.



# NSTA Corporate Plan 2022 - 2027



Since the publication of the NSTA's previous Corporate Plan in 2019, the NSTA Strategy to fully incorporate the move towards net zero has come into force. The NSTA has therefore also updated its Corporate Plan to set out the framework it will use for the next 5 years and identify how it will "lead with purpose" on its key areas of focus: Energy, Transition, Value and Corporate/Internal Priorities. Each key area is divided into (i) objectives, (ii) strategies and risks for delivery and (iii) outcomes and each section provides examples of how the NSTA will implement its Corporate Plan. The main areas of focus are identified as:

— **Energy:**

- Effective and efficient oil and gas asset stewardship;
- Supporting UK oil and gas production but also focusing on meeting demand as cleanly as possible; and
- Secure and stable domestic supply of oil and gas.

— **Transition:**

- Regulate emissions reductions by measuring and monitoring UKCS atmospheric emissions;
- Energy integration which includes supporting renewable energy production, electrification projects and working with government, industry and other regulators to accelerate progress; and
- Carbon Capture & Storage and the creation of carbon storage opportunities on the UKCS.

— **Value**

- Value creation across to whole chain;
- Investment, efficiency and jobs; and
- Digital and innovation with a focus on delivering the NSTA Digital Strategy.

— **Corporate/Internal Priorities**

- The NSTA being committed to ensuring it is a great place to work; and
- Enhancing the NSTA's digital, data and technology landscape.

The Corporate Plan also lists the Key Performance Indicator targets and measures which will be used to measure success and hold the industry accountable, including to the commitment to halve upstream emissions by 2030.

The Corporate Plan is available [here](#).



# Other publications and announcements:

- [Updated Decommissioning Strategy](#) (May 2021)
- [Updated Flaring and Venting Guidance](#) (June 2021)
- [UKCS Decommissioning Benchmarking Report 2021](#) (November 2021)
- [Wells Insight Report](#) (December 2021)
- [Updated Guidance on requirements for the planning for Cessation of Production](#) (February 2022)
- [Updated Carbon Storage Licence Application Guidance](#) (April 2022)
- [Revised Petroleum Operations Notice 9](#) (May 2022)
- [Supply Chain Report 2021](#) (published May 2022)

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